

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DAN ONISCHUK,

Plaintiff,

v.

Case No. 05-C-0704

JOHNSON CONTROLS, INC., and
FOLEY & LARDNER LAW FIRM,

Defendants.

ORDER

On July 6, 2005, the plaintiff, Dan Onischuk, filed a pro se complaint, alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. On July 29, 2005, the plaintiff's motion to proceed in forma pauperis was denied without prejudice. Upon review of additional documents submitted by the plaintiff, his petition to proceed without paying the filing fee was denied. The plaintiff was ordered to pay the filing fee within 30 days of the date of the court's August 23, 2005, order or the case would be subject to dismissal. The case was dismissed because of the plaintiff's failure to pay the filing fee. See Court's Order of September 27, 2005. Subsequent motions filed by the defendant were also denied.

On October 17, 2005, the plaintiff filed a motion for reconsideration (Docket #25) and a motion for extension of time to serve the defendants. (Docket #24). In his motion for reconsideration, the plaintiff submitted documents, including a letter from the Clerk of Court which states that he has paid the \$250.00 filing fee in this action. The docket for this case did not reflect that the filing fee had been paid at the time the court ordered dismissal of the case for failure to pay the filing fee. The docketing error has been corrected. Accordingly,

the plaintiff's motion requesting the court to reconsider its dismissal of this action will be granted. The court's order dismissing the case will be vacated.

With respect to the plaintiff's motion for an extension of time to serve the defendants, it is unclear from the plaintiff's motion whether or not the defendants have been served with his complaint. Moreover, the plaintiff filed an amended complaint on September 12, 2005, but at that time there was no indication that the filing fee had been paid. Given the error about the filing fee, the plaintiff will have the time provided in the Rule 4 of the Federal Rules of Civil Procedure, using today's date as the date of filing the complaint, to serve the defendants in this action.

NOW, THEREFORE, IT IS ORDERED that the plaintiff's motion to reconsider be and hereby is **granted**. (Docket # 25).

IT IS FURTHER ORDERED that the Court's Order of September 27, 2005, be and hereby is **vacated**.

IT IS ALSO ORDERED that the plaintiff's motion for an extension of time to serve the defendants be and hereby is **granted**. (Docket # 24)

Dated at Milwaukee, Wisconsin this 21st day of October, 2005.

BY THE COURT:

s/ Rudolph T. Randa

RUDOLPH T. RANDA
Chief United States District Judge